

TITLE 16

Health and Safety

Regulatory Provisions Concerning Public Health

CHAPTER 25. Health-Care Decisions

§ 2501. Definitions.

- (a) "Advance health-care directive" shall mean an individual instruction or a power of attorney for health care, or both.
- (b) "Agent" shall mean an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power.
- (c) "Artificial nutrition and hydration" means supplying food and water through a conduit, such as a tube or intravenous line where the recipient is not required to chew or swallow voluntarily, including, but not limited to, nasogastric tubes, gastrostomies, jejunostomies and intravenous infusions. Artificial nutrition and hydration does not include assisted feeding, such as spoon or bottle feeding.
- (d) "Capacity" shall mean an individual's ability to understand the significant benefits, risks and alternatives to proposed health care and to make and communicate a health-care decision.
- (e) "Declarant" shall mean a person who executes an advance health-care directive.
- (f) "Guardian" shall mean a judicially appointed guardian or conservator having authority to make health-care decisions for an individual.
- (g) "Health care" shall mean any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.
- (h) "Health-care decision" shall mean a decision made by an individual or the individual's agent, surrogate or guardian regarding the individual's health care, including:
 - (1) Selection and discharge of health-care providers and institutions;
 - (2) Acceptance or refusal of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate;
 - (3) Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care; and
 - (4) Execution of a DMOST form pursuant to Chapter 25A of this title.
- (i) "Health-care institution" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

(j) "Health-care provider" means an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

(k) "Individual instruction" means an individual's direction concerning a health-care decision for the individual.

(l) "Life-sustaining procedure" means:

(1) Any medical procedure, treatment or intervention that:

- a. Utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function; and
- b. Is of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition or permanent unconsciousness.

(2) Procedures which can include, but are not limited to, assisted ventilation, renal dialysis, surgical procedures, blood transfusions and the administration of drugs, antibiotics and artificial nutrition and hydration.

(m) "Medically ineffective treatment" means that, to a reasonable degree of medical certainty, a medical procedure will not:

- (1) Prevent or reduce the deterioration of the health of an individual; or
- (2) Prevent the impending death of an individual.

(n) "Person" means an individual, corporation, statutory trust, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

(o) "Physician" means an individual authorized to practice medicine under Chapter 17 of Title 24.

(p) "Power of attorney for health care" means the designation of an agent to make health-care decisions for the individual granting the power.

(q) "Primary physician" or "attending physician" shall mean a physician designated by an individual or the individual's agent, surrogate or guardian to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

(r) "Qualifying condition" means the existence of 1 or more of the following conditions in the patient, certified in writing in the patient's medical record by the attending physician and by at least 1 other physician who, when the condition in question is "permanently unconscious" shall be a board-certified neurologist and/or neurosurgeon:

(1) "Permanently unconscious" or "permanent unconsciousness" means a medical condition that has existed for at least 4 weeks and that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma.

(2) "Terminal condition" means any disease, illness or condition sustained by any human being for which there is no reasonable medical expectation of recovery and which, as a medical probability, will result in the death of such human being regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes.

(3) "Serious illness or frailty" means a condition based on which the health-care practitioner would not be surprised if the patient died within the next year.

(s) "Reasonably available" shall mean readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health-care needs.

(t) "Supervising health-care provider" shall mean the primary physician, or if there is no primary physician or the primary physician is not reasonably available, the health-care provider who has undertaken primary responsibility for an individual's health care.

(u) "Surrogate" means an adult individual or individuals who:

- (1) Have capacity;
- (2) Are reasonably available;
- (3) Are willing to make health-care decisions, including decisions to initiate, refuse to initiate, continue or discontinue the use of a life-sustaining procedure on behalf of a patient who lacks capacity; and
- (4) Are identified by the attending physician in accordance with this chapter as the person or persons who are to make those decisions in accordance with this chapter.

70 Del. Laws, c. 392, § 2 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>); 73 Del. Laws, c. 329, § 57 (<https://legis.delaware.gov/SessionLaws?volume=73&chapter=329>); 80 Del. Laws, c. 18, §§ 2, 4 (<https://legis.delaware.gov/SessionLaws?volume=80&chapter=18>);

§ 2502. Right of self-determination.

An individual, legally adult, who is mentally competent, has the right to refuse medical or surgical treatment if such refusal is not contrary to existing public health laws.

70 Del. Laws, c. 392, § 2 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>);

§ 2503. Advance health-care directives.

(a) Subject to the limitations of this chapter, an adult who is mentally competent may:

- (1) Give an individual instruction. The instruction may be limited to take effect only if a specified condition arises; and/or
- (2) Execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity.

(b) (1) An advance health-care directive must be:

- a. In writing;
- b. Signed by the declarant or by another person in the declarant's presence and at the declarant's expressed direction;
- c. Dated;
- d. Signed in the presence of 2 or more adult witnesses neither of whom:
 1. Is related to the declarant by blood, marriage or adoption;
 2. Is entitled to any portion of the estate of the declarant under any will or trust of the declarant or codicil thereto then existing nor, at the time of the executing of the power of attorney for health-care, is entitled thereto by operation of law then existing;
 3. Has, at the time of the execution of the advance health care directive, a present or inchoate claim against any portion of the estate of the declarant;
 4. Has a direct financial responsibility for the declarant's medical care; or
 5. Has a controlling interest in or is an operator or an employee of a health-care institution at which the declarant is a patient or resident.

(2) Each witness to the advance health-care directive shall state in writing that he or she is not prohibited under this section from being a witness.

(c) An advance health-care directive shall become effective only upon a determination that the declarant lacks capacity, and when the advance health-care directive is to be applied to the providing, withholding or withdrawal of a life-sustaining procedure, the advance health-care directive shall become effective only upon a determination that the declarant lacks capacity and has a qualifying condition.

(d) An advance health-care directive ceases to be effective upon a determination that the declarant has recovered capacity.

(e) A determination that an individual lacks or has recovered capacity that affects an individual instruction or the authority of an agent must be made by the primary physician or other physician(s) as specified in a written health-care directive; however, a power of attorney for health care may include a provision accommodating an individual's religious or moral beliefs. That provision may designate a person other than a physician to certify in a notarized document that the individual lacks or has recovered capacity.

(f) An agent shall make a health-care decision to treat, withdraw or withhold treatment on behalf of the patient after consultation with the attending physician or with the person other than a physician designated pursuant to subsection (e) of this section, and in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. If the patient's instructions or wishes are not known or clearly applicable, the agent's decision shall conform as closely as possible to what the patient would have done or intended under the circumstances. To the extent that the agent knows or is able to determine, the agent's decision is to take into account, including, but not limited to, the following factors if applicable:

- (1) The patient's personal, philosophical, religious and ethical values;
- (2) The patient's likelihood of regaining decision making capacity;
- (3) The patient's likelihood of death;
- (4) The treatment's burdens on and benefits to the patient; and
- (5) Reliable oral or written statements previously made by the patient, including, but not limited to, statements made to family members, friends, health-care providers or religious leaders.

If the agent is unable to determine what the patient would have done or intended under the circumstances, the agent's decision shall be made in the best interest of the patient. To the extent the agent knows and is able to determine, the agent's decision is to take into account, including, but not limited to, the factors, if applicable, stated in this subsection.

(g) A health-care decision made by an agent for a principal is effective without judicial approval.

(h) Unless related to the principal by blood, marriage or adoption, an agent may not have a controlling interest in or be an operator or employee of a residential long-term health-care institution at which the principal is receiving care.

(i) A written advance health-care directive may include the individual's nomination of a guardian of the person.

(j) A life-sustaining procedure may not be withheld or withdrawn from a patient known to be pregnant, so long as it is probable that the fetus will develop to be viable outside the uterus with the continued application of a life-sustaining procedure.

70 Del. Laws, c. 392, § 3 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>);

§ 2504. Revocation of advance health-care directive.

(a) An individual who is mentally competent may revoke all or part of an advance health-care directive:

- (1) By a signed writing; or
- (2) In any manner that communicates an intent to revoke done in the presence of 2 competent persons, 1 of whom is a health-care provider.

- (b) Any revocation that is not in writing shall be memorialized in writing and signed and dated by both witnesses. This record shall be made a part of the medical record.
- (c) Any person, including, but not limited to, a health-care provider, agent or guardian, who is informed of a revocation shall immediately communicate the fact of the revocation to the supervising health-care provider and to any health-care institution at which the patient is receiving care.
- (d) A decree of annulment, divorce, dissolution of marriage or a filing of a petition for divorce revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in a power of attorney for health care.
- (e) An advance health-care directive that conflicts with an earlier advance health-care directive revokes the earlier directive to the extent of the conflict.
- (f) The initiation of emergency treatment shall be presumed to represent a suspension of an advance health-care directive while receiving such emergency treatment.

70 Del. Laws, c. 392, § 3 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>);

§ 2505. Optional form.

The following form may, but need not, be used to create an advance health-care directive. The other sections of this chapter govern the effect of this or any other writing used to create an advance health-care directive. An individual may complete or modify all or any part of the following form:

ADVANCE HEALTH-CARE DIRECTIVE

EXPLANATION

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you.

This form lets you do either or both of these things. It also lets you express your wishes regarding anatomical gifts and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, an agent may not have a controlling interest in or be an operator or employee of a residential long-term health-care institution at which you are receiving care.

If you do not have a qualifying condition (terminal illness/injury or permanent unconsciousness), your agent may make all health-care decisions for you except for decisions providing, withholding or withdrawing of a life-sustaining procedure. Unless you limit the agent's authority, your agent will have the right to:

- (a) Consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition unless it's a life-sustaining procedure or otherwise required by law.
- (b) Select or discharge health-care providers and health-care institutions;

If you have a qualifying condition, your agent may make all health-care decisions for you, including, but not limited to:

- (c) The decisions listed in (a) and (b).
- (d) Consent or refuse consent to life-sustaining procedures, such as, but not limited to, cardiopulmonary resuscitation and orders not to resuscitate.
- (e) Direct the providing, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care.

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional instructions for other than end of life decisions.

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death.

Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. It is required that 2 other individuals sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that the person understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health-care directive or replace this form at any time.

PART 1: POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

_____(name of individual you choose as agent)

(address)_____(city)_____(state)_____(zip code)

(home phone)_____(work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health-care decision for me, I designate as my first alternate agent: _____(name of individual you choose as first alternate agent)

(address)_____(city)_____(state)_____(zip code)

(home phone)_____(work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

_____(name of individual you choose as second alternate agent)

(address)_____(city)_____(state)_____(zip code)

(home phone)_____(work phone)

(2) AGENT'S AUTHORITY: If I am not in a qualifying condition my agent is authorized to make all health-care decisions for me, except decisions about life-sustaining procedures and as I state here; and if I am in a qualifying condition, my agent is authorized to make all health-care decisions for me, except as I state here:

(Add additional sheets if necessary.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines I lack the capacity to make my own health-care decisions. As to decisions concerning the providing, withholding and withdrawal of life-sustaining procedures my agent's authority becomes effective when my primary physician determines I lack the capacity to make my own health-care decisions and my primary physician and another physician determine I am in a terminal condition or permanently unconscious.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, (please check one):

☐ I nominate the agent(s) whom I named in this form in the order designated to act as guardian.

☐ I nominate the following to be guardian in the order designated:

☐ I do not nominate anyone to be guardian.

PART 2: INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: If I am in a qualifying condition, I direct that my health-care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

Choice Not To Prolong Life

I do not want my life to be prolonged if: (please check all that apply)

_____ (i) I have a terminal condition (an incurable condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, makes death imminent and from which, despite the application of life-sustaining procedures, there can be no recovery) and regarding artificial nutrition and hydration,

I make the following specific directions: I want used I do not want used

Artificial nutrition through a conduit _____

Hydration through a conduit _____

_____ (ii) I become permanently unconscious (a medical condition that has been diagnosed in accordance with currently accepted medical standards that has lasted at least 4 weeks and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma) and regarding artificial nutrition and hydration,

I make the following specific directions: I want used I do not want used

Artificial nutrition through a conduit _____

Hydration through a conduit _____

Choice To Prolong Life

_____ I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

RELIEF FROM PAIN: Except as I state in the following space, I direct treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

(7) OTHER MEDICAL INSTRUCTIONS: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

(Add additional sheets if necessary.)

PART 3: ANATOMICAL GIFTS AT DEATH

(OPTIONAL)

(8) I am mentally competent and 18 years or more of age.

I hereby make this anatomical gift to take effect upon my death. The marks in the appropriate squares and words filled into the blanks below indicate my desires.

I give: ☐ my body; ☐ any needed organs or parts; ☐ the following organs or parts;

To the following person or institutions ☐ the physician in attendance at my death; ☐ the hospital in which I die; ☐ the following named physician, hospital, storage bank or other medical institution; ☐ the following individual for treatment; for the following purposes: ☐ any purpose authorized by law; ☐ transplantation; ☐ therapy; ☐ research; ☐ medical education.

PART 4: PRIMARY PHYSICIAN

(OPTIONAL)

(9) I designate the following physician as my primary physician:

(name of physician)

(address)_____ (city)_____ (state)_____ (zip code)

(phone)

OPTIONAL: If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(name of physician)

(address)_____ (city)_____ (state)_____ (zip code)

(phone)

Primary Physician shall mean a physician designated by an individual or the individual's agent or guardian, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

(10) EFFECT OF COPY: A copy of this form has the same effect as the original.

(11) SIGNATURE: Sign and date the form here: I understand the purpose and effect of this document.

_____ (date) _____ (sign your name)

_____ (address) _____ (print your name)

_____ (city) _____ (state) _____ (zip code)

(12) SIGNATURES OF WITNESSES:

Statement Of Witnesses

SIGNED AND DECLARED by the above-named declarant as and for the declarant's written declaration under 16 Del. C. §§ 2502 and 2503, in our presence, who in the declarant's presence, at the declarant's request, and in the presence of each other, have hereunto subscribed our names as witnesses, and state: A. That the Declarant is mentally competent. B. That neither of them: 1. Is related to the declarant by blood, marriage or adoption; 2. Is entitled to any portion of the estate of the declarant under any will of the declarant or codicil thereto then existing nor, at the time of the executing of the advance health-care directive, is so entitled by operation of law then existing; 3. Has, at the time of the execution of the advance health-care directive, a present or inchoate claim against any portion of the estate of the declarant; 4. Has a direct financial responsibility for the declarant's medical care; 5. Has a controlling interest in or is an operator or an employee of a residential long-term health-care institution in which the declarant is a resident; or 6. Is under eighteen years of age. C. That if the declarant is a resident of a sanitarium, rest home, nursing home, boarding home or related institution, one of the witnesses, _____, is at the time of the execution of the advance health-care directive, a patient advocate or ombudsman designated by the Department of Health and Social Services.

First witness _____ Second Witness

_____ (print name) _____ (print name)

_____ (address) _____ (city, state, zip code) _____ (address) (city, state, zip code)

_____ (signature of witness) _____ (date) _____ (signature of witness) (date)

I am not prohibited by § 2503 of _____ I am not prohibited by § 2503 of

Title 16 of the Delaware Code _____ Title 16 of the Delaware Code

from being a witness. _____ from being a witness.

70 Del. Laws, c. 392, § 3 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 79 Del. Laws, c. 204, § 1 (<https://legis.delaware.gov/SessionLaws?volume=79&chapter=204>);

§ 2506. Decisions by guardian.

A guardian shall comply with the instructions of the adult person with a disability and may not revoke the person's advance health-care directive unless the appointing court expressly so authorizes. Nothing in this chapter shall limit the jurisdiction of the Court of Chancery over the person and property of a person with a disability.

70 Del. Laws, c. 392, § 3 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>); 79 Del. Laws, c. 371, § 13 (<https://legis.delaware.gov/SessionLaws?volume=79&chapter=371>);

§ 2507. Surrogates.

(a) A surrogate may make a health-care decision to treat, withdraw or withhold treatment for an adult patient if the patient has been determined by the attending physician to lack capacity and there is no agent or guardian, or if the directive does not address the specific issue. This determination shall be confirmed in writing in the patient's medical record by the attending physician. Without this determination and confirmation, the patient is presumed to have capacity and may give or revoke an advance health-care directive or disqualify a surrogate.

(b) (1) A mentally competent patient may designate any individual to act as a surrogate by personally informing the supervising health-care provider in the presence of a witness. The designated surrogate may not act as a witness. The designation of the surrogate shall be confirmed in writing in the patient's medical record by the supervising health-care provider and signed by the witness.

(2) In the absence of a designation or if the designee is not reasonably available, any member of the following classes of the patient's family who is reasonably available, in the descending order of priority, may act, when permitted by this section, as a surrogate and shall be recognized as such by the supervising health-care provider:

- a. The spouse, unless a petition for divorce has been filed;
- b. An adult child;
- c. A parent;
- d. An adult sibling;
- e. An adult grandchild;
- f. An adult niece or nephew;
- g. An adult aunt or uncle.

Individuals specified in this subsection are disqualified from acting as a surrogate if the patient has filed a petition for a Protection From Abuse order against the individual or if the individual is the subject of a civil or criminal order prohibiting contact with the patient.

(3) If an adult patient is in an acute care setting or is a client of the Department of Health and Social Services and none of the individuals eligible to act as a surrogate under subsection (b) of this section is reasonably available, an adult, other than a paid caregiver, who has exhibited special care and concern for the patient, who is familiar with the patient's personal values and who is reasonably available may make health-care decisions to treat, withdraw or withhold treatment on behalf of the patient. Such person shall provide an affidavit to the health-care facility or to the attending or treating physician which includes statements that he or she is:

- a. A close friend of the patient;
- b. Is willing and able to become involved in the patient's health care; and
- c. Has maintained such regular contact with the patient as to be familiar with the patient's activities, health, personal values and morals.

The affidavit must also recite facts and circumstances that demonstrate such person's familiarity with the patient. End of life decisions involving the withdrawal or withholding of treatment must meet the requirements of this chapter.

(4) Nothing in this section shall be interpreted as limiting the Court of Chancery's authority to appoint a guardian of a person to act as a surrogate under the Court's rules and procedures.

(5) A supervising health-care provider may require an individual claiming the right to act as a surrogate for a patient to provide a written declaration under the penalty of perjury stating facts and circumstances sufficient to establish the claimed authority.

(6) A mentally competent patient may at any time disqualify a member of the patient's family from acting as the patient's surrogate by a signed writing or by personally informing the health-care provider of the disqualification.

(7) A surrogate may make a decision to provide, withhold or withdraw a life-sustaining procedure if the patient has a qualifying condition documented in writing with its nature and cause, if known, in the patient's medical record by the attending physician.

(8) A surrogate's decision on behalf of the patient to treat, withdraw or withhold treatment shall be made according to the following paragraphs and otherwise meet the requirements of this chapter:

a. Decisions shall be made in consultation with the attending physician.

b. 1. The surrogate shall make a health-care decision to treat, withdraw or withhold treatment in accordance with the patient's individual instructions, if any, and other wishes to the extent known by the surrogate.

2. If the patient's instructions or wishes are not known or clearly applicable, the surrogate's decision shall conform as closely as possible to what the patient would have done or intended under the circumstances. To the extent the surrogate knows or is able to determine, the surrogate's decision is to take into account, including, but not limited to, the following factors if applicable:

A. The patient's personal, philosophical, religious and ethical values;

B. The patient's likelihood of regaining decision making capacity;

C. The patient's likelihood of death;

D. The treatment's burdens on and benefits to the patient;

E. Reliable oral or written statements previously made by the patient, including, but not limited to, statements made to family members, friends, health care providers or religious leaders.

3. If the surrogate is unable to determine what the patient would have done or intended under the circumstances, the surrogate's decision shall be made in the best interest of the patient. To the extent the surrogate knows and is able to determine, the surrogate's decision is to take into account, including, but not limited to, the factors, if applicable, stated in paragraph (b)(8)b.2. of this section.

(9) In the event an individual specified in paragraph (b)(2) of this section claims that the individual has not been recognized or consulted as a surrogate or if persons with equal decision making priority under paragraph (b)(2) of this section cannot agree who shall be a surrogate or disagree about a health-care decision, and a patient who lacks capacity is receiving care in a health-care institution, the attending physician or an individual specified in paragraph (b)(2) of this section may refer the case to an appropriate committee of the health-care institution for a recommendation in compliance with this chapter, and the attending physician may act in accordance with the recommendation of the committee or transfer the patient in accordance with the provisions of § 2508(g) of this title. A physician who acts in accordance with the recommendation of the committee is not subject to civil or criminal liability or to discipline for unprofessional conduct for any claim based on lack of consent or authorization for the action.

70 Del. Laws, c. 392, § 3 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 74 Del. Laws, c. 328, §§ 1-3 (<https://legis.delaware.gov/SessionLaws?volume=74&chapter=328>); 79 Del. Laws, c. 28, § 1 (<https://legis.delaware.gov/SessionLaws?volume=79&chapter=28>);

§ 2508. Obligations of health-care provider.

(a) Before implementing a health-care decision made for a patient, a supervising health-care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision. The decision of an agent or surrogate does not apply if the patient objects to the decision to remove life-sustaining treatment, providing that the objection is (1) by a signed writing or (2) in any manner that communicates in the presence of 2 competent persons, 1 of whom is a physician.

(b) A supervising health-care provider who knows of the existence of an advance health-care directive or a revocation of an advance health-care directive shall promptly record its existence in the patient's health-care record and, if it is in writing, shall request a copy and, if it is not in writing, shall request a copy of the witness statement, and shall arrange for its maintenance in the health-care record.

(c) A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity or that another condition exists which affects an individual instruction or the authority of an agent, surrogate or guardian, shall promptly record the determination in the patient's health-care record and communicate the determination to the patient, if possible, and to any person then authorized to make health-care decisions for the patient.

(d) Except as provided in subsections (e) and (f) of this section, a health-care provider or institution providing care to a patient shall:

(1) Comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health-care decisions for the patient; and

(2) In the absence of an individual instruction, comply with a health-care decision for the patient made by a person then authorized to make health-care decisions for the patient to the extent the agent or surrogate is permitted by this chapter.

(e) A health-care provider may decline to comply with an individual instruction or health-care decision for reasons of conscience. A health-care institution may decline to comply with an individual instruction or health-care decision if the instruction or decision is contrary to a written policy of the institution which is based on reasons of conscience and if the policy was communicated to the patient or to a person then authorized to make health-care decisions for the patient.

(f) A health-care provider or institution may decline to comply with an individual instruction or health-care decision that requires medically ineffective treatment or health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

(g) A health-care provider or institution that declines to comply with an individual instruction or health-care decision shall:

(1) Promptly so inform the patient, if possible, and any person then authorized to make health-care decisions for the patient;

(2) Provide continuing care, including continuing life-sustaining care, to the patient until a transfer can be effected; and

(3) Not impede the transfer of the patient to another health-care provider or institution identified by the patient, the patient's agent or the patient's surrogate.

70 Del. Laws, c. 392, § 3 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

§ 2509. Health-care information.

(a) Unless otherwise specified in an advance health-care directive, a person then authorized to make health-care decisions for a patient has the same rights as the patient to request, receive, examine, copy and consent to the disclosure of medical or any other health-care information.

(b) Unless otherwise specified in an advance health-care directive or court order, an agent appointed by a valid advance health-care directive under this chapter, a surrogate determined and confirmed under § 2507 of this title or a guardian of the person of a minor or adult appointed pursuant to a court order shall be authorized as a “personal representative” with full authority and standing thereof as provided in the Health Insurance Portability and Accountability Act of 1996 [P.L. 104-191], its regulations and the standards issued by the Secretary of the United States Department of Health and Social Services.

70 Del. Laws, c. 392, § 3 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>); 76 Del. Laws, c. 307, § 1 (<https://legis.delaware.gov/SessionLaws?volume=76&chapter=307>);

§ 2510. Immunities.

(a) A health-care provider or institution acting in good faith and in accordance with generally accepted health-care standards applicable to the health-care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

- (1) Complying with a health-care decision of a person apparently having authority to make a health-care decision for a patient, including a decision to withhold or withdraw health care;
- (2) Declining to comply with a health-care decision of a person based on a belief that the person then lacked authority;
- (3) Complying with an advance health-care directive and assuming that the directive was valid when made and has not been revoked or terminated;
- (4) Providing life-sustaining treatment in an emergency situation when the existence of a health-care directive is unknown; or
- (5) Declining to comply with a health-care decision or advance health-care directive because the instruction is contrary to the conscience or good faith medical judgment of the health-care provider or the written policies of the institution.

(b) An individual acting as agent or surrogate under this chapter is not subject to civil or criminal liability or to discipline for unprofessional conduct for health-care decisions made in good faith.

70 Del. Laws, c. 392, § 3 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>);

§ 2511. Safeguards.

(a) Anyone who has good reason to believe that the withdrawal or withholding of health care in a particular case:

- (1) Is contrary to the most recent expressed wishes of a declarant;
- (2) Is being proposed pursuant to an advance health-care directive that has been falsified, forged or coerced; or
- (3) Is being considered without the benefit of a revocation which has been unlawfully concealed, destroyed, altered or cancelled;

may petition the Court of Chancery for appointment of a guardian for such declarant.

(b) The Department of Health and Social Services and the Public Guardian shall have oversight over any advance health-care directive executed by a resident of a long-term care facility, as defined in § 1102 of this title. Such advance health-care directive shall have no force nor effect if the declarant is a resident of a long-term care facility, as defined in § 1102 of this title, at the time the advance health-care directive is executed unless 1 of the witnesses is a person designated as a patient advocate or ombudsperson by the Department of Health and Social Services. The patient advocate or ombudsperson must have the qualifications required of other witnesses under this chapter except as provided in § 2508 of this title.

63 Del. Laws, c. 386, § 1 (<https://legis.delaware.gov/SessionLaws?volume=63&chapter=386>); 64 Del. Laws, c. 204, § 8 (<https://legis.delaware.gov/SessionLaws?volume=64&chapter=204>); 69 Del. Laws, c. 345, § 5 (<https://legis.delaware.gov/SessionLaws?volume=69&chapter=345>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 70 Del. Laws, c. 392, §§ 3, 4 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>); 79 Del. Laws, c. 204, § 2 (<https://legis.delaware.gov/SessionLaws?volume=79&chapter=204>); 81 Del. Laws, c. 207, § 3 (<https://legis.delaware.gov/SessionLaws?volume=81&chapter=207>);

§ 2512. Assumptions and presumptions.

(a) Neither the execution of an advance health-care directive under this chapter nor the fact that health care is withheld from a patient in accordance therewith shall, for any purpose, constitute a suicide.

(b) The making of an advance health-care directive pursuant to this chapter shall not restrict, inhibit nor impair in any manner the sale, procurement or issuance of any policy of life insurance, nor shall it be deemed or presumed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of health care from an insured patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health facility or other health-care provider, nor any health-care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan or nonprofit hospital service plan, shall require any person to execute an advance health-care directive as a condition to being insured, or for receiving health-care services, nor shall the signing of an advance health-care directive be a bar, except as provided in § 2508 of this title.

(d) [Repealed.]

63 Del. Laws, c. 386, § 1 (<https://legis.delaware.gov/SessionLaws?volume=63&chapter=386>); 64 Del. Laws, c. 204, § 7 (<https://legis.delaware.gov/SessionLaws?volume=64&chapter=204>); 70 Del. Laws, c. 392, §§ 3, 5 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>);

§ 2513. Penalties.

(a) Whoever threatens directly or indirectly, coerces or intimidates any person to execute a declaration directing the withholding or withdrawal of maintenance medical treatment shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$500 nor more than \$1,000, be imprisoned not less than 30 days nor more than 90 days, or both.

(b) Whoever knowingly conceals, destroys, falsifies or forges a document with intent to create the false impression that another person has directed that maintenance medical treatment be utilized for the prolongation of that person's life is guilty of a class C felony.

(c) The Superior Court shall have jurisdiction over all offenses under this chapter.

63 Del. Laws, c. 386, § 1 (<https://legis.delaware.gov/SessionLaws?volume=63&chapter=386>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 70 Del. Laws, c. 392, §§ 3, 6 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>);

§ 2514. Capacity.

(a) This chapter does not affect the right of an individual to make health-care decisions while having capacity to do so.

(b) An individual is presumed to have capacity to make a health-care decision and to give or revoke an advance health-care directive.

70 Del. Laws, c. 392, § 7 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>);

§ 2515. Accommodation.

Notwithstanding this chapter, an individual who elects to have treatment by spiritual means in lieu of medical or surgical treatment shall not be compelled to submit to medical or surgical treatment.

70 Del. Laws, c. 392, § 7 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>);

§ 2516. Effect of copy.

A copy of an advance health-care directive or revocation of an advance health-care directive, has the same effect as the original.

70 Del. Laws, c. 392, § 7 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>);

§ 2517. Recognition of advance directives executed in other states.

An advance directive or similar health-care declaration validly executed under the laws of another state in compliance with the laws of that state or of this State is valid for purposes of and subject to the limitations of this chapter.

70 Del. Laws, c. 392, § 7 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>);

§ 2518. Effect on prior declarations and directives.

Nothing in this chapter shall be construed to modify or affect the terms of any declaration, appointment of agent or durable power of attorney validly executed prior to June 26, 1996, which grants the authority for medical treatment or directs the withholding or withdrawal of medical treatment, except that a prior declaration shall not be interpreted to allow the withdrawal or withholding of artificial nutrition or hydration unless that desire is specifically stated in that directive. If withdrawal or withholding of artificial nutrition or hydration is not specifically addressed in a prior declaration, a health-care provider shall comply with a decision regarding withdrawal or withholding of artificial nutrition or hydration for the patient made by a person then authorized to make health-care decisions for the patient to the extent the agent or surrogate is permitted by this chapter. Nothing in this chapter shall be construed to limit the use of any previous living will forms conforming to law or any other form which meets the requirements of this chapter.

70 Del. Laws, c. 392, § 7 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=392>); 71 Del. Laws, c. 419, § 1 (<https://legis.delaware.gov/SessionLaws?volume=71&chapter=419>);

§ 2519. Health-care institutions and guardianships for nonacute patients.

(a) A health-care institution must, as early as 3 but no later than 5 business days of determining that a patient no longer requires acute care in the health-care institution, provide a written notice to the patient, the patient's surrogate, and, if the patient does not have a surrogate, to any member of the patient's family who is reasonably available, in the descending order of priority set forth in § 2507 of this title, that the health-care institution has concluded that the nonacute patient would benefit from the appointment of a guardian, who shall be fully authorized with powers necessary to transfer the patient from acute care to less restrictive nonacute care, and that a petition for the appointment of a guardian should be filed within 10 business days of the date of the notice.

(b) If the process of appointing a guardian for the nonacute patient has not been initiated within the period set forth in the notice required under subsection (a) of this section, the institution shall provide a second written notice to the patient, the patient's surrogate, and if the patient does not have a surrogate, to any member of the patient's family who is reasonably available, in the descending order of priority set forth in § 2507 of this title, that the petition for the appointment of a guardian must be filed within 10 business days of the date of the second notice, or the institution will initiate the process of appointing a guardian.

(c) If the process of appointing a guardian for the nonacute patient has not been initiated within the time set forth in the second notice required under subsection (b) of this section, or if a guardian who is fully authorized with powers necessary to transfer the patient from acute care to less restrictive nonacute care has not been appointed within 30 days from the date of the filing of a petition for appointment of a guardian, the health-care institution may initiate the process of appointing a guardian.

82 Del. Laws, c. 270, § 1 (<https://legis.delaware.gov/SessionLaws?volume=82&chapter=270>);

Delaware General Assembly (<http://legis.delaware.gov/>).

Judicial (<http://courts.delaware.gov/>)

Executive (<http://delaware.gov>).

Contact (<http://delaware.gov/help/degov-contact.shtml>).

Twitter (https://twitter.com/delaware_gov/).

Help (<http://delaware.gov/help/default.html>).